



City of Anaheim  
**OFFICE OF THE CITY ATTORNEY**

**RECEIVED**  
February 20, 2019  
**Commission on  
State Mandates**

February 20, 2019

Via Drop Box

Heather Halsey, Esq.  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**RE: Test Claim No. 17-TC-13: Request to Disallow Late Filed Comments  
of Department of Finance, or, in the Alternative, for Extension to File  
Rebuttal**

Dear Ms. Halsey:

I write in regard to the January 29 comments filed by the Department of Finance ("Department") concerning the above-referenced test claim. The City of Anaheim ("Claimant") requests that the Department's late-filed comments be disallowed from the record of these proceedings, or, alternatively, that the Claimant be granted an extension of time to file a rebuttal to the Department's comments. The reasons for granting this request are set forth below.

**Procedural Background**

In correspondence dated November 21, 2018, Commission staff approved requests by the Department, the State Board and the Santa Ana Board, for an extension of time to file comments and submit the administrative record on Claimant's test claim. This approval established a due date of January 28, 2019 for comments on the test claim for all three entities.

In correspondence dated January 23, 2019, despite Claimant's test claim not having been consolidated with any other related test claim,<sup>1</sup> Commission staff approved, in a single letter, a second request made by the State Board, the Santa Ana Board, and the San Diego Board (collectively, "Water Boards"), for a further extension of time to file comments and submit the administrative records on Test Claims 17-TC-05 and 17-TC-07 through 17-TC-28. This approval established a

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<sup>1</sup> On or about November 16, 2018, The County of Orange submitted a request to consolidate all test claims on the Water Code Section 13383 Trash Orders issued by the Santa Ana Regional Board, which, at that time, included Test Claims 17-TC-07 through 17-TC-24. The State Board and Regional Board supported the consolidation in their November 19, 2019 submittal. This request remains outstanding.

new due date of March 29, 2019, for the Water Boards' comments on these twenty-two test claims; it did not extend the January 28, 2019, due date for Department's comments as to any test claim.

On or about January 29, 2019, the Department submitted comments on test claim 17-TC-13, which Commission staff correctly designated as a "Late Filing."

### **Basis for Request**

Section 1183.2 of the Commission's regulations provides that written comments concerning a test claim "shall be certified, filed and served within 30 days from the date the test claim...is issued for comment."<sup>2</sup> Section 1187.9 of regulations also provides that any party or interested party may request an extension of time by filing a request with the executive director before the date set for filing of comments.<sup>3</sup> The Department did not request an extension of time beyond January 28 to file comments. For this reason, Department's late-filed comments should not be considered in these proceedings, and Claimant should be relieved from submitting rebuttal thereto.<sup>4</sup>

If, however, the Commission has a valid legal basis for allowing Department's comments as if timely filed, and chooses to so allow, Claimant, in the alternative, requests an extension of time to submit rebuttal comments, pursuant to section 1187.9. This extension of time should coincide with the due date for Claimant's rebuttal to the Water Boards' comments, which are currently due on March 29, 2019. Furthermore, the due date of any rebuttal should not be before Claimant has received notice that the administrative record has been submitted and is available for review. Thus, under this alternative, unless extended, Claimant's rebuttal to comments of the Department and the Water Boards would tentatively be due 30 days after service of the Water Boards' comments and the administrative record, assuming the administrative record is concurrently submitted.<sup>5</sup>

Disallowing the Department's late-filed claims, or alternatively, granting Claimant the requested extension of time, is consistent with section 1187.9. The hearing on Claimant's test claim is currently scheduled for September 24, 2021. Filing all rebuttal comments at the same time – and after preparation of the administrative record – will not require postponement of the hearing date. Additionally, this extension would not result in prejudice to any party or interested party, and there is otherwise no good cause for denying this request. To the contrary, granting the extension would impart much needed clarity and administrative efficiency at this point in the proceedings, by aligning deadlines for rebuttal comments from claimants across the various related test claims. Because the Commission has not yet granted the pending request for consolidation of the Water Code Section 13383 Trash Order Test Claims relating to orders issued by the Santa Ana Board, at present, these test claims are not formally being managed together, and the various claimants are left with no option but to expend time and resources to individually make these types of case

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<sup>2</sup> 2 C.C.R. 1183.2 (b). All references to the Commission's regulations shall be to chapter 2.5 of Division 2 of the California Code of Regulations.

<sup>3</sup> 2 C.C.R. 1187.9.

<sup>4</sup> It should be noted that Department's late-filed comments also fail to comply with the certification requirement of section 1183.2.

<sup>5</sup> 2 C.C.R. 1183.3(a).

management requests in an ad hoc fashion. To avoid procedural confusion and the unnecessary duplication of effort, Claimant urges you to reconsider consolidating Test Claims 17-TC-07 through 17-TC-28 now, rather than waiting until all comments are received and the record reviewed (as indicated in your January 23, 2019 letter).

For the above reasons, Claimant requests that the Department's late-filed comments be disallowed and not considered as part of these proceedings. Alternatively, in the event the Commission determines that there is a valid legal basis to allow the comments and have them considered, Claimant requests an extension of time to file a rebuttal, until such time as the due date of rebuttal to anticipated comments from the Water Boards.

Your prompt consideration and determination as to this request is greatly appreciated.

I declare under penalty of perjury that the foregoing, signed on February 20, 2019, is true and correct to the best of my personal knowledge, information or belief.

Sincerely,

Robert Fabela, City Attorney

By: 

Bryn M. Morley  
Deputy City Attorney

cc Per Commission Mailing List

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

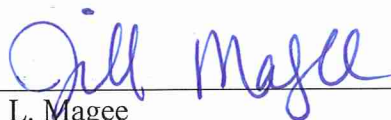
On February 21, 2019, I served the:

- **Notice of Extension Request Approval issued February 21, 2019**
- **Claimant's Request for Extension of Time filed February 20, 2019**

*Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Anaheim, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017, 17-TC-13*  
City of Anaheim, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 21, 2019 at Sacramento, California.



Jill L. Magee  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/12/19

**Claim Number:** 17-TC-13

**Matter:** Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of  
Anaheim, Santa Ana Regional Water Quality Control Board, Effective June 2,  
2017

**Claimant:** City of Anaheim

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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